FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT
_____

August 2, 2023

Christopher M. Wolpert
Clerk of Court

KIMBERLY GRAHAM,

    Petitioner - Appellee,

v.

TAMIKA WHITE, Warden,

    Respondent - Appellant.

No. 23-5069
(D.C. No. 4:23-CV-00164-CVE-SH)
(N.D. Okla.)

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ORDER
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Before **McHUGH** and **EID**, Circuit Judges.
_____

Respondent-Appellant Tamika White, the Warden at Mabel Bassett Correctional

Center in McLoud, Oklahoma, moved for a stay pending appeal of the district court's

judgment granting Oklahoma state prisoner, Kimberly Graham, an unconditional writ of

habeas corpus and ordering her release from prison. Ms. Graham filed a response in

opposition, and Ms. White filed a reply in support of her stay motion.

Ms. Graham was released from prison on June 22, 2023. The State of Oklahoma,

through Ms. White, seeks to stay the district court's judgment pending appeal so that it

may move in state court to reacquire custody of Ms. Graham. The State initially sought a

stay in district court, but that court denied the stay request because the State had not

overcome the presumption favoring release of a state prisoner pending appeal when the

State is appealing a grant of habeas relief, *see* Fed. R. App. P. 23(c); *see also Hilton v.*

Braunskill, 481 U.S. 770, 777 (1987) ("There is a presumption in favor of enlargement of the petitioner with or without surety, but it may be overcome if the traditional stay factors tip the balance against it."). We accord a presumption of correctness to the district court's release decision under Rule 23(c), unless the State overcomes that presumption, *see* Fed. R. App. P. 23(d); *see also Braunskill*, 481 U.S. at 777 ("A court reviewing an initial custody determination pursuant to Rule 23(d) must accord a presumption of correctness to the initial custody determination made pursuant to Rule 23(c), . . . but that presumption, too, may be overcome if the traditional stay factors so indicate.").

After considering the parties' submissions, the rules governing release in a habeas appeal under Rule 23 of the Federal Rules of Appellate Procedure, and the traditional stay factors outlined in *Braunskill*, 481 U.S. at 776, we conclude the State has not overcome the presumption of correctness of the district court's Rule 23(c) release decision. Accordingly, we deny the motion for a stay pending appeal.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

Lynn Tiefenthaler

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Tenth Circuit Court of Appeals

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Case Name:	White v. Graham
Case Number:	23-5069
Document(s):	Document(s)

Docket Text:
[11018166] Order filed by Judges McHugh and Eid denying appellant's motion for a stay pending appeal filed by Tamika White. Served on 08/02/2023. [23-5069]

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